

ROBERT D. MUELLER, P.C.

ATTORNEYS AT LAW

POST OFFICE BOX 44997
RIO RANCHO, NEW MEXICO 87174
TELEPHONE (505) 247-1110

April 13, 2021

VIA CERTIFIED MAIL, RETURN RECEIPT

CORPORATION SERVICE COMPANY, Registered Agent
EQUIFAX CREDIT INFORMATION SERVICES, INC.
MC-CSC1, 726 E. Michigan Dr., Ste. 101, Hobbs, NM 88240-3465

RE: TUMOLO vs. EQUIFAX CREDIT INFORMATION SERVICES, INC.
c/o CORPORATION SERVICE COMPANY, Registered Agent

To whom it may concern:

Please find attached a copy of the Summons and Complaint for the above captioned case.

Pursuant to the New Mexico Rules of Civil Procedure, we are serving Equifax Credit Information Services, Inc. via certified mail, return receipt upon you as its Registered Agent.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

/s/ Robert D. Mueller
Robert D. Mueller
Attorney At Law

RDM/rdm

Exhibit A

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

**BRIAN LOUIS TUMOLO,
Plaintiff,**

vs.

Case No. D-202-CV-2021-01138

**EQUIFAX CREDIT INFORMATION SERVICES, INC.,
a Foreign Corporation,
Defendant.**

SUMMONS (1)

**THE STATE OF NEW MEXICO
TO: EQUIFAX CREDIT INFORMATION SERVICES, INC.**

ADDRESS: CORPORATION SERVICE COMPANY, Registered Agent for
EQUIFAX CREDIT INFORMATION SERVICES, INC.
MC-CSC1, 726 E. Michigan Dr., Ste. 101, Hobbs, NM 88240-3465

GREETINGS:

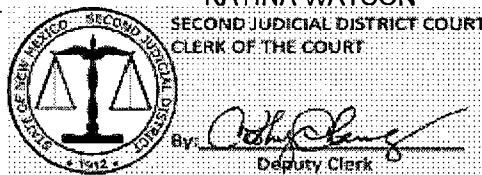
You are hereby directed to serve a pleading or motion in response to the complaint within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Mail answer to District Court: 400 Lomas NW, Albuquerque, New Mexico 87102

Mail copy to Plaintiff c/o: Robert D. Mueller, Attorney at Law
Post Office Box 44997
Rio Rancho, New Mexico 87174
Tel. (505) 247-1110

Witness the Lopez, Victor S., of the Second District Court of the State of
New Mexico, and the seal of this District Court of said County, this day of
2/17/2021



Note: This summons does not require you to see, telephone or write to the District Judge of the Court at this time. It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court, within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a judgment by default against you.

RETURN

Case No. D-202-CV-2020-01401

STATE OF _____)
) ss.
COUNTY OF _____)

(complete the following, unless service by sheriff or deputy)

I, being sworn, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this Summons in _____ County on the ____ day of _____, 20__, by delivering a copy of this summons and a copy of the complaint (indicate below how served):

(check only if service by sheriff or deputy)

I certify that I served this summons in _____ County on the ____ day of _____, 20__ by delivering a copy of this summons and a copy of complaint in the following manner:

(person serving summons must check one box and fill in appropriate blanks)

☐ by delivering a copy of this summons and a copy of the complaint to the defendant
_____ (used when defendant receives copy of summons or refuses to receive summons).

☐ by deliver a copy of this summons and a copy of the complaint to _____, a person over the age of fifteen (15) years and residing at the usual place of abode of defendant _____, located at _____ (address) (used when defendant is not presently at the abode).

☐ by delivering a copy of this summons and a copy of the complaint to _____, an agent authorized to receive service of process of _____ (parent) (guardian) (custodian) of defendant.

☐ by delivering a copy of this summons and a copy of the complaint to _____, (parent)(guardian) of defendant (used when defendant is a minor or an incompetent person).

☐ by delivering a copy of this summons and a copy of the complaint to _____, (name of person) _____ (title of person authorized to receive service) (used when defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of Private Process Server

Title (if any)

*Subscribed and sworn to before me
this ____ day of _____, 20__.

Judge, Notary or other officer authorized to administer oaths

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRIAN LOUIS TUMOLO,
Plaintiff,

vs.

Case No. D-202-CV-2021-01138

**EQUIFAX CREDIT INFORMATION SERVICES, INC.,
a Foreign Corporation,
Defendant.**

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ADDRESS: CORPORATION SERVICE COMPANY, Registered Agent for
EQUIFAX CREDIT INFORMATION SERVICES, INC.
MC-CSC1, 726 E. Michigan Dr., Ste. 101, Hobbs, NM 88240-3465

GREETINGS:

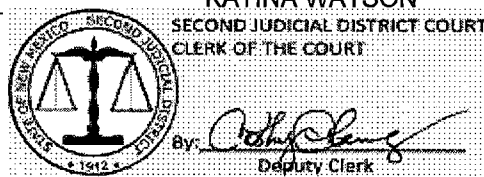
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Mail copy to Plaintiff c/o: Robert D. Mueller, Attorney at Law
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Tel. (505) 247-1110

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2/17/2021



Note: This summons does not require you to see, telephone or write to the District Judge of the Court at this time. It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court, within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a judgment by default against you.

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Case No. D-202-CV-2020-01401

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) ss.
COUNTY OF _____)

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Fees: _____

Signature of Private Process Server

Title (if any)

*Subscribed and sworn to before me
this ____ day of _____, 20__.

Judge, Notary or other officer authorized to administer oaths

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
2/17/2021 9:51 AM
CLERK OF THE COURT
Blair Sandoval

BRIAN LOUIS TUMOLO,
Plaintiff,

vs.

Case No. D-202-CV-2021-01138

EQUIFAX CREDIT INFORMATION SERVICES, INC.,
a Foreign Corporation,
Defendant.

**PLAINTIFF'S CERTIFICATION REGARDING
ARBITRATION UNDER RULE 58**

I, Robert D. Mueller, certify that:

_____ This case is subject to referral to arbitration under Local Rule 58. No party seeks relief other than a money judgment and no party seeks an award in excess of \$25,000.00 inclusive of punitive damages and exclusive of interest, costs and attorneys fees.

XXX This case is NOT subject to referral to arbitration under Local Rule 58 because at least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$25,000.00 inclusive of punitive damages and exclusive of interest, costs and attorneys fees.

I further certify that the pleadings in this case are closed within the meaning of Guideline 1-5 of the Guidelines to Local Rule 58.

Respectfully Submitted: ROBERT D. MUELLER, P.C.

/s/ Robert D. Mueller
Robert D. Mueller
Attorney for Plaintiff
P.O. Box 44997
Rio Rancho, NM 87174
Tel. (505) 247-1110
Email: mbuna4@gmail.com

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
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Bernalillo County
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Defendant.

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ARBITRATION UNDER RULE 58**

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Respectfully Submitted: ROBERT D. MUELLER, P.C.

/s/ Robert D. Mueller
Robert D. Mueller
Attorney for Plaintiff
P.O. Box 44997
Rio Rancho, NM 87174
Tel. (505) 247-1110
Email: mbuna4@gmail.com

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
2/17/2021 9:51 AM
CLERK OF THE COURT
Blair Sandoval

BRIAN LOUIS TUMOLO,
Plaintiff,

vs.

Case No. D-202-CV-2021-01138

EQUIFAX CREDIT INFORMATION SERVICES, INC.,
a Foreign Corporation,
Defendant.

**COMPLAINT FOR DAMAGES, DECLARATORY RELIEF,
AND INJUNCTIVE RELIEF**

Plaintiff, by and through his undersigned attorney, for his Complaint states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Brian Louis Tumolo, (hereafter "Mr. Tumolo") is an individual residing in Bernalillo County, New Mexico.

2. Defendant Equifax Credit Information Services, Inc., a foreign corporation (hereafter "Equifax") is a foreign corporation whose principal place of business is located at 1600 Peachtree Street, Atlanta, Georgia 30309. Equifax is a "consumer reporting agency" as defined by the FCRA, 15 U.S.C. § 1681a(f). Equifax assembles consumer credit information and other information on consumers for the purpose of furnishing credit reports to third parties. Equifax uses means of interstate commerce for the purpose of preparing and furnishing credit reports.

3. The Court has concurrent jurisdiction over the claims in the matter pursuant to 15 U.S.C. § 1681p. *See also Haywood v. Drown*, 556 U.S. 729 (2009) ("State courts have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited.").

4. Venue is proper in the Second Judicial District Court of the State of New Mexico, County of Bernalillo, pursuant to NMSA 1978 §38-3-1.

FACTS

5. Sometime in late November, 2019, Mr. Tumolo reviewed his credit report with Equifax and noticed that his credit rating was severely damaged by two zero allegedly delinquent accounts that were reporting as late despite having zero balances. The first account, Seterus Inc. No. 659002961 had a zero balance, yet was being reported as 120 days late¹. The second account, Bank of America No. 5452, had a zero balance but was being reported as 30 days late.

6. On December 29, 2019, Mr. Tumolo sent a letter to Equifax disputing the validity of the derogatory items pursuant to 15 U.S.C. § 1681i. Mr. Tumolo detailed all the errors in his Equifax account, including the two zero balance accounts erroneously reported as late, and demanding that Equifax remove these delinquent accounts from his credit report.

7. On January 4, 2020, Equifax responded to Mr. Tumolo's letter by refusing to remove the inaccurate information regarding the Seterus, Inc. account that is falsely being reported as 120 days late, despite having a zero balance.

COUNT I – FCRA VIOLATIONS BY EQUIFAX

8. Equifax failed to maintain reasonable procedures to ensure the maximum possible accuracy of the consumer credit information it reported concerning Mr. Tumolo.

9. Equifax:

a. failed to review and consider all relevant information submitted by

¹ The Seterus, Inc. account is coded an "I5" by Equifax, meaning 120 days late, where an "I1" would mean that there is no delinquency on the account. The Bank of America account is coded as an "I2", meaning 30 days late.

Mr. Tumolo in connection with his disputes;

- b. failed to conduct genuine and reasonable investigations in response to Mr. Tumolo's disputes;
- c. persisted in reporting information that they knew or should have known was unlawful to report; and
- d. failed to delete and/or block information that was unlawful to report from Mr. Tumolo's credit report.

10. Based on the above stated failures by Equifax, Equifax failed to comply with the requirements of FCRA, 15 U.S.C. § 1681e(b) (Compliance Procedures) by failing to follow reasonable procedures to assure maximum possible accuracy of the information in its credit reports.

11. Based on the above stated failures by Equifax, Equifax failed to reinvestigate the current status of the disputed information, or delete the item within 30 days of receiving the dispute pursuant to FCRA, 15 U.S.C. § 1681i(a)(A).

12. The actions and inactions of Equifax were willful, or, in the alternative, negligent violations of the FCRA, 15 U.S.C. §§ 1681n, 1681o.

13. Mr. Tumolo has been substantially damaged by the refusal of Equifax to properly remove the inaccurate and damaging zero balance accounts falsely reported as late.

14. Mr. Tumolo's actual damages include:

- 1) humiliation due to his damaged credit score;
- 2) injury to his reputation and credit worthiness due to his damaged credit score;

- 3) anguish and frustration he has suffered due to the refusal of Equifax to remove the delinquent status on the zero balance accounts; and
- 4) great financial hardship including missed opportunities and higher interest rate loans as the direct result of the erroneous, damaging and false credit reporting conducted by Equifax.

15. Mr. Tumolo is entitled to actual and punitive damages.

**COUNT II – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT
BY EQUIFAX**

16. Defendant's actions concerning Mr. Tumolo's account occurred in the regular course of its trade or commerce and its actions are subject to the New Mexico Unfair Practices Act, NMSA 1978 §§ 57-12-1 *et seq.* ("UPA").

17. Defendant's actions violate the UPA, as defined by NMSA 1978 § 57-12-2(D) generally and NMSA 1978 § 57-12-2(D)(15) specifically.

18. Defendant willfully engaged in these violations of the UPA.

19. Mr. Tumolo requests the Court enjoin Defendant under the UPA from inaccurately reporting the zero balance accounts

20. Mr. Tumolo is also entitled to recover actual or statutory damages, trebled.

WHEREFORE, Plaintiff respectfully requests that the Court grant him the following relief:

- A. Declare that it is unlawful for Equifax to inaccurately and falsely report the above listed accounts regarding said zero balance accounts on Mr. Tumolo's credit report;

- B. Enjoin Equifax from inaccurately reporting the listed accounts regarding the zero balance accounts on Mr. Tumolo's credit report or to any credit reporting agency;
- C. Award actual damages against Equifax under the FRCA;
- D. Award punitive damages against Equifax under the FRCA;
- E. Award actual or statutory damages, trebled, against Equifax under the UPA;
- F. Award costs of suit and reasonable attorney fees; and
- G. Provide such further relief as the Court deems just, equitable, and proper.

Respectfully submitted:

ROBERT D. MUELLER, P.C.

/s/ Robert D. Mueller

Robert D. Mueller

Attorney for Plaintiff

P.O. Box 44997

Rio Rancho, NM 87174

Tel. (505) 247-1110

Email: mbuna4@gmail.com

Robert D. Mueller, P.C.
P.O. Box 44997
Rio Rancho, NM 87174

Case 1:21-cv-00464-SMV-LF Document 1-1 Filed 05/18/21 Page 13 of 13



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88240

U.S. POSTAGE PAID
FCM LETTER
RIO RANCHO, NM
87124
APR 14, 21
AMOUNT

\$7.40

R2304M110231-07

CORPORATION SERVICE COMPANY,
Registered Agent - EQUIFAX CREDIT INFORMATION
SERVICES, INC.
MC-CSC1, 726 E. Michigan Dr., Ste. 101
Hobbs, NM 88240-3465